

NOT INCLUDED IN
BOUND VOLUMES

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LKQ FOSTER AUTO PARTS, INC.

and

Case 19-CA-164069

ANDREW G. BOBREK

**ORDER RESCINDING ORDER APPROVING STIPULATION,
GRANTING MOTION, AND TRANSFERRING PROCEEDING
TO THE BOARD**

This matter came before the National Labor Relations Board pursuant to a Board Order granting a joint motion by the parties to transfer this proceeding directly to the Board for a decision based on the stipulated record. For the reasons that follow, the Board has now decided to rescind its prior Order and to deny the joint motion.

On March 31, 2016, the General Counsel, through the Regional Director for Region 19, issued a complaint alleging that the Respondent has been violating Section 8(a)(1) of the National Labor Relations Act by maintaining its Mandatory Arbitration Agreement. On August 26, 2016, the parties filed a joint motion to waive a hearing and a decision by an administrative law judge and to transfer this proceeding to the Board for a decision based on a stipulated record. On October 17, 2016, the Board issued an Order Approving Stipulation, Granting Motion, and Transferring Proceeding to the Board. Pursuant to that Order, the Board transferred the case to the Board for the purpose of issuing findings of fact, conclusions of law, and a Decision and Order, and set a briefing schedule. The parties thereafter filed briefs.

In support of the complaint's allegation that the Respondent unlawfully maintained its arbitration agreement, the General Counsel relies on the Board's decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), holding that the maintenance of an arbitration agreement requiring employees to waive the right to commence or participate in class or collective actions in all forums, whether arbitral or judicial, violate Section 8(a)(1) of the Act.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. *Id.* at ___, 138 S. Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. *Id.* at ___, 138 S. Ct. at 1619, 1632.

In light of the Supreme Court's decision in *Epic Systems*, which overrules the Board's holding in *Murphy Oil USA, Inc.*, the Board now rescinds its October 17, 2016 Order and denies the parties' August 26, 2016 joint motion without prejudice.¹

¹ Although not specifically alleged in the complaint, in his brief to the Board, the General Counsel asserts that the Respondent's maintenance of the arbitration agreement also violated Sec. 8(a)(1) because employees would construe it to interfere with their right to file charges with the Board. *Epic Systems* did not affect the issue whether the Respondent's arbitration agreement unlawfully restricts employee access to the Board. But see *The Boeing Company*, 365 NLRB

Dated, Washington, D.C. October 23, 2018.

By Direction of the Board:

/s/ Roxanne Rothschild

Acting Executive Secretary

No. 154 (2017). Having rescinded the Order transferring this proceeding for a decision based on a stipulated record, the Board expresses no opinion with respect to this issue at this time, including whether it may be litigated in the absence of a complaint allegation.